

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NICHOLAS HERNANDEZ,

Claimant,

vs.

JOHN DEERE DAVENPORT WORKS,

Employer,  
Self-Insured,  
Defendant.

File No. 5067924

A P P E A L

D E C I S I O N

Head Notes: 1108.50; 1402.30; 1402.40;  
1801; 1803; 2501; 2907;  
5-9998

Claimant Nicholas Hernandez appeals from an arbitration decision filed on May 8, 2020. Defendant John Deere Davenport Works, self-insured employer, responds to the appeal. The case was heard on February 7, 2020, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 5, 2020.

In the arbitration decision, the deputy commissioner found claimant failed to meet his burden of proof to establish he sustained a right shoulder injury on or about October 20, 2018, that arose out of and in the course of his employment with defendant. That finding rendered the issues of temporary disability, permanent disability, and recovery of requested past medical expenses moot. The deputy commissioner found each party should pay their own costs of the arbitration proceeding.

In a ruling on defendant's application for rehearing filed on May 18, 2020, the deputy commissioner found defendant is entitled to receive credit pursuant to Iowa Code sections 85.34(4) and 85.34(5) in the amount of \$3,111.88, for any future weekly benefits due pursuant to subsection 2, for any current or subsequent injury to claimant. The ruling on defendant's application for rehearing was not appealed.

On appeal, claimant asserts the deputy commissioner erred in finding claimant failed to prove he sustained a work-related injury as alleged. Claimant asserts it should be found on appeal that he is entitled to receive temporary disability benefits, permanent disability benefits, and medical benefits for his alleged injury. Claimant also asserts it should be found he is entitled to taxation of his costs against defendant.

Defendant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on May 8, 2020, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues.

I affirm the deputy commissioner's finding that claimant failed to prove he sustained a work-related right shoulder injury as alleged. I affirm the deputy commissioner's finding that because claimant failed to prove causation and compensability, the issues of temporary disability, permanent disability and recovery of requested past medical expenses are moot. I affirm the deputy commissioner's finding that each party should pay their own costs of the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding the above issues.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on May 8, 2020, is affirmed in its entirety.

Claimant shall take nothing from these proceedings.

Defendant shall receive credit pursuant to Iowa Code sections 85.34(4) and 85.34(5) in the amount of \$3,111.88, for any future weekly benefits due pursuant to subsection 2, for any current or subsequent injury to claimant.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Signed and filed on this 18<sup>th</sup> day of November, 2020.



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JOSEPH S. CORTESE II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Andrew Bribriesco (via WCES)

Troy Howell (via WCES)